

Remarks

Reconsideration and allowance of the present application in view of the following remarks and amendments are respectfully requested. To facilitate examination, the Applicant provides the stated objection or rejection expressed by the Examiner in the Office Action mailed April 22, 2004, followed by the action to overcome the particular objection or rejection and place the application in condition for allowance or better condition for appeal.

Claims 4, 12, 18, and 26 have been withdrawn from further consideration. The Applicant reserves the right to rejoin these claims pursuant to 37 C.F.R. § 1.141.

The information disclosure statement filed November 24, 2003 has been placed in the application file, but the information referred to therein has not been considered. The Examiner stated that these references would be considered if the Applicant provided copies. The Applicant is submitting copies of the cited references along with a Substitute Supplemental Information Disclosure Statement List with the present response for consideration by the Examiner.

The abstract was objected to as containing legal terminology, i.e., "comprise." The Applicant submitted a substitute abstract on February 4, 2004, which was not entered by the Examiner. The Applicant submits a substitute abstract to overcome the objection and conform the abstract to the currently pending claims.

The amendment to Claim 1 filed February 4, 2004 was not in compliance with 37 C.F.R. 1.121 as revised July 30, 2003. The Examiner changed Claim 1 in red ink to bring it into compliance but did not provide a copy of this change to the Applicant. The Applicant appreciates this courtesy; however, the Applicant does not see a lack of

compliance with previously amended Claim 1 and requests further clarification to ensure compliance with 37 C.F.R. 1.121.

The disclosure was objected to for various informalities. The Applicant has amended page 21, lines 3-5 to conform to the requested change by the Examiner in the Office Action mailed November 5, 2003.

Claims 1 and 13-15 were rejected under 35 U.S.C. Section 112, second paragraph, as being indefinite. The Examiner explained the basis for this rejection in paragraph 8 of the April 22, 2004 Office Action. The Applicant respectfully disagrees with the Examiner's reasoning for at least the reason that the term "portion" as used in Claims 1, 5, 8, 15, 19, and 22 and the term "part" as used in Claims 11 and 25 does not exclude "total" or "100%" as these terms have been incorrectly defined by the Examiner. The Examiner has incorrectly interpreted these claims as reciting "only a portion" or "only a part", respectively. The Applicant asserts that the claims as written are definite; however, in an effort to advance the prosecution and place the application in better condition for appeal, the Applicant has amended the claims to insert "at least" before each of these terms.

The Examiner asserts an effective filing date of December 31, 2001 for Claims 1, 5, 8-11, 13-15, 19, and 22-25 because "the parent application did not disclose the portion of the body faceable surface covered being 50% or greater." The Applicant respectfully disagrees. The present application claims priority to Application Serial Number 09/504,071 filed February 14, 2000, which in turn claims priority to Application Serial Number 08/768,162 filed December 13, 1996. Pending Claims 1 and 15 recite "a retainer flap extending over said baffle and covering greater than about 40 percent of

the surface opposed to the body-faceable surface." Support for this claim limitation is found in Application Serial Number 09/504,071 filed February 14, 2000 on page 14, lines 7-11 and in Application Serial Number 08/768,162 filed December 13, 1996 on page 7, lines 22-25. Therefore, the Examiner's basis for denying an effective filing date of December 13, 1996 for these claims is incorrect.

Claims 1, 5, 11, 13, 15, 19, and 25 were rejected under 35 U.S.C. 103(a) as being unpatentable over Molnlycke PCT '008 in view of Lassen '062. The Applicant respectfully submits that the cited references cannot be combined as suggested by the Examiner to render the claimed invention obvious.

Lassen '062 discloses an anatomically conformable labial sanitary pad. The Examiner asserts that Molnlycke PCT '008 "includes all of the claimed structure except for the absorbent article being configured for disposition primarily with a vestibule of a female wearer." The Applicant respectfully disagrees.

Figures 1 and 2 of Molnlycke PCT '008 illustrate an embodiment having an elastic sheet 4 on the body faceable surface of an absorbent article. Thus, Figures 1 and 2 of Molnlycke PCT '008 clearly do not teach the limitation "a retainer flap extending over said baffle and covering greater than about 40 percent of the surface opposed to the body-faceable surface" as recited in Claims 1 and 15.

Furthermore, Molnlycke PCT '008 teaches that the embodiment illustrated in Figures 1 and 2 includes "a narrow sheet 4" (page 2, line 13), and Figures 1 and 2 illustrate a sheet 4 that covers less than approximately 20 percent of the baffle. For this embodiment, Molnlycke PCT '008 explicitly teaches away from a flap covering greater than about 40 percent of the surface opposed to the body-faceable surface, as

follows:

In order to convert such an article into package form, it is necessary first to bring the sheet 4 to the opposite side of the absorbent body prior to folding the article and then to tuck the opposite end of the article into the space defined between the sheet and envelope. (Molnlycke PCT '008, p. 3, line 36 through p. 4, line 3).

Thus, the sheet 4 illustrated in Figures 1 and 2 and described in Molnlycke PCT '008 necessarily covers a limited amount of the baffle to prevent covering the absorbent body 1 and to facilitate the principle operation of "tucking" the opposite end into the inverted sheet. Modifying Molnlycke PCT '008 to cover greater than about 40 percent of the outer layer 3, as the Examiner suggests, would interfere with the absorbent body 1, preclude simply "tucking" the opposite end of the absorbent article into the inverted sheet, and would substantially change the principle of operation taught by Figures 1 and 2 of Molnlycke PCT '008.¹ Therefore, the Applicant respectfully asserts that Figures 1 and 2 of Molnlycke PCT '008 cannot form the basis of the obviousness rejection.

Figures 3-5 of Molnlycke PCT '008 illustrate an incontinence protector for men having a sheet 4 on the outer surface thereof. As described on page 4, line 25 through page 5, line 3 of Molnlycke PCT '008, this embodiment "comprises a bag-like container" with "an aperture 5 through which the wearer's penis and scrotum can be inserted into the protector." As such, combining the embodiment illustrated in Figures 3-5 and described in Molnlycke PCT '008 with the teachings of Lassen '062 to create an "absorbent article being configured for disposition primarily within a vestibule of a

¹ See In re Ratti, 270 F.2d 810 (C.C.P.A. 1959) (rejecting an obviousness rejection based on a combination of references that would require a substantial reconstruction and redesign of the elements shown in the primary reference as well as a change in the basic principle of operation of the primary reference).

female wearer” as recited in Claims 1 and 15 completely changes the principle of operation and renders the embodiment illustrated in Figures 3-5 unsatisfactory for its intended purpose.² Therefore, the Applicant respectfully asserts that Figures 3-5 of Molnlycke PCT ‘008 cannot form the basis of the obviousness rejection.

Additionally, it is respectfully submitted that merely combining elements found in various prior art patents to produce the Applicant’s claimed invention is not a proper basis for a 35 U.S.C. § 103(a) rejection.³ “Virtually all inventions are necessarily combinations of old elements. The notion, therefore, that combination claims can be declared invalid merely upon finding similar elements in separate prior patents would necessarily destroy virtually all patents and cannot be the law under the statute, ‘103.’”⁴ Thus, the task of the Patent Office is essentially a burden of proof not just to show prior patents with selected elements similar to respective parts of a claimed combination, but to show teachings to support obviously combining the elements in the manner claimed. It is respectfully submitted that the Office Action fails to show where Molnlycke PCT ‘008 and Lassen ‘062 provide the motivation for obviously combining their respective technologies in the manner claimed by the Applicant in the claimed invention.

For at least the reasons discussed above, the Applicant respectfully submits that

² See In re Gordon, 733 F.2d 900 (Fed. Cir. 1984) (reversing a finding of obviousness because the proposed modification would render the primary reference unsatisfactory for its intended purpose).

³ Graham v. John Deere Co., 383 U.S. 1 (1966) (“Obviousness cannot be established by combining the teachings of the prior art to produce the claimed invention, absent some teaching or suggestion supporting the combination. Under section 103, teachings of references can be combined only if there is some suggestion or incentive to do so.”)

⁴ Panduit Corp. v. Dennison Manufacturing Co., 1 U.S.P.Q.2d 1593, 1603 (Fed. Cir. 1987) (footnotes omitted).

the claims patentably define over the cited references. As such, it is believed that the present application is in complete condition for allowance and favorable action, therefore, is respectfully requested. Should any issues remain after consideration of this amendment, then Examiner Reichle is invited and encouraged to telephone the undersigned at her convenience.

Respectfully submitted,

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